

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8344 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARBAT DEVABHAI MAKVANA

Versus

UNION OF INDIA

Appearance:

MR MD RANA for Petitioner
MR BHARAT T RAO for Respondent No. 1
MR GOVERNMENT PLEADER for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/02/99

ORAL JUDGEMENT

#. Through this writ petition under Article 226 of the Constitution of India, the petitioner has prayed that the detention order dated 1st August, 1998 passed by the District Magistrate, Junagadh under Section 3(2) of Prevention of Black Marketing and Maintenance of Supply Act be quashed and the petitioner be released from illegal detention.

#. It appears from the grounds of detention contained in Annexure-C that the petitioner was running fair price shop in foodgrain, kerosene, oil and sugar etc to be supplied to various ration card holders. His shop was inspected by the authority concerned and number of irregularities highlighted in the grounds of detention, were found. It was also found that on earlier occasion also, the petitioner committed several serious irregularities due to which his security was forfeited and warning was given to him. Since he did not stop his activities in the nature of illegal black marketing activities, the detaining authority was subjectively satisfied that the preventive detention against the petitioner was the only proper and effective remedy so as to immediately stop his illegal black marketing activities. Accordingly, the impugned order was passed.

#. The impugned order has been challenged by the learned counsel for the petitioner on three grounds.

#. One of the grounds is that there was delay on the part of the State Government as well as the Central Government in dealing with the representation dated 27th August, 1998 sent by the petitioner through proper channel to both of these authorities. After considering the material on record and also record with the learned AGP, I find no substances in this attack. The delay in dealing with the representation has to be considered at several stages. The learned counsel for the petitioner contended that the representation dated 27th August, 1998 was received in the office in District Magistrate on 1-9-1998 and this representation remained pending with the jail authorities for 4 days and no explanation has been offered for this delay. The learned AGP on the other hand on the basis of record with him contended that it was representation of the detenu which was dated 27th August, 1998 but was given to the Jail Authorities only on 1st September, 1998. He had shown the relevant endorsement to the learned counsel for the petitioner and he was satisfied that this representation was actually given to the Jail Authorities on 1-9-1998. Thus, merely by dating the representation on 27-8-1998, no benefit can be given to the petitioner and it is clear that the representation was given to the Jail Authorities on 1-9-1998 which was forwarded to the detaining authority on the same date and was received by the detaining authority on the same date viz. 1-9-1998. Thus, there was no delay on the part of the Jail Authority.

#. So far as the detaining authority is concerned, on

1-9-1998 the detention order was approved by the State Government and hence he had no jurisdiction to deal with the said representation. He forwarded the same to the State Government and the State Government after considering the entire aspect of the case and material rejected the same on 7-9-98, hence it cannot be said that there was unreasonable delay or unexplained delay in disposal of this representation. The affidavit of the State Government viz. Shri P.R.Shukala, Deputy Secretary to the Government of Gujarat clearly explains in what manner after 1-9-1998, the representation moved from one table to another and was ultimately rejected on 7-9-1998. For this Para-3 of his counter affidavit can be referred. Thus, there was no delay on the part of the State Government in deciding the representation. What is expected from the State Government is expeditious disposal of the representation and no straight jacket formula can be laid down fixing the time limit during which such representation should be disposed of. Taking into consideration, the exigencies of the situation, workload and other things, reasonable time has to be given to the State Government for deciding such representation. If the representation was forwarded by the detaining authority to the State Government on 1-9-1998 and it was rejected on 7-9-98, only 5 days intervened and this was quite reasonable time in which the representation was dealt with. Thus there is reasonable explanations for this delay.

#. So far the Central Government is concerned, the counter affidavit of Shri Alice Chacko, Under Secretary, Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi in Para-3 discloses that the representation dated 27th August, 1998 was received in the concerned Section on 11-9-1998. It is after receipt of the representation by the concerned section of the Central Government that the question of delay has to be examined. It may be mentioned that three representations were sent to the Central Government by the petitioner. One routed through the detaining authority, the other through the State Government and the third again through the State Government on 5-1-1-98. Upon receipt of first representation on 11-9-98, parawise comments of the State Government were called for through telegram of the same date. The parawise comments were received in the concerned section on 14-9-1998. After considering the same, the representation was rejected on 15th September, 1998. Thus, it cannot be said that there was any delay on the part of the Central Government in dealing with the representation. The second representation was also of the same day and both the representations were disposed

of by the same order dated 15-9-1998. The third representation dated 5-10-1998 though containing identical grounds was also rejected and thus there was no delay in disposing of the representation either on the part of the State Government or on the part of Central Government and hence on this ground, the detention order cannot be quashed.

#. Another contention has been that the detaining authority has not considered lesser drastic remedy nor has disclosed in the grounds of detention that the lesser drastic remedy which was equally efficacious viz. suspension or cancellation of licence could not have served the purpose and stopped the petitioner from committing his black marketing activities again and again. I have gone through grounds of detention. From para-17 of grounds of detention, it appears that the detaining authority had considered only one alternative remedy viz. initiation of court proceedings under Section 12-AA of the Essential Commodities Act. Beyond this, no other remedy was considered by the detaining authority. The learned AGP on the other hand pointed out that on earlier occasion warning was given to the petitioner and his security was forfeited. May that be it was, another remedy which was considered but merely by consideration of two alternative remedies viz, forfeiting the security deposit earlier and initiation of proceedings under Section 12 AA of the Essential Commodities Act, the impugned order cannot be sustained. If there were other alternative remedies, those should also have been considered by the detaining authority. The learned counsel for the petitioner has rightly pointed that the detaining authority has not at all considered the fact as to why cancellation or suspension of licence of the petitioner could not have prevented him from indulging in such nefarious and anti social activities. The learned AGP on the strength of Para-12 of the counter affidavit of the detaining authority has pointed out that he had considered the alternative remedies but perusal of Para-12 of the counter affidavit of the detaining authority shows that the word alternative remedy is used in singular in this paragraph which means singular alternative remedy and not plural alternative remedies. Moreover, even in this belated attempt, the detaining authority has not stated nor deposed that he was conscious and had considered that cancellation or suspension of licence of the petitioner could not have served the purpose of preventing the petitioner from indulging in such activities. After all the nature of business of the petitioner was to run the fair price shop in foodgrains, kerosene and sugar etc.

He could not run this business without obtaining the licence. There is no dispute that licence was obtained by the petitioner. Merely by obtaining licence, he could not have run the business. He was required to do something more viz. he was to lift the stock of foodgrains, sugar, kerosene etc from the godown of Food Corporation of India or like agency which supplies these commodities to fair price shops keepers. Immediately on suspension or cancellation of the licences of the petitioner supply of all these articles to the petitioner would have been stopped. Consequently he could not have sold in black market these essential commodities which were required to be supplied to the ration card holders.

#. Existence of alternative remedy is no bar for passing the order of detention. But the detaining authority in case were alternative remedies are available is bound to consider all the alternative remedies and not that he should consider only one alternative remedy. If he considers only one alternative remedy and does not consider the other alternative remedies, it can be said that the impugned order suffers from the vice of non application of mind. On the other hand, if he considers all the alternative remedies and comes to the conclusion that such remedies are not efficacious for preventing the anti social activities of the petitioner, this court cannot sit in appeal over the subjective satisfaction of the detaining authority. It is only when all the alternative remedies are considered by the detaining authority, then only the detention order can be upheld. Since the detaining authority did not apply his mind even in the grounds of detention as well as in the counter affidavit para-12 that the alternative remedies of suspension or cancellation of licences were considered by him, the impugned order is rendered illegal and on this ground the impugned order has to be quashed.

#. Since the writ petition succeeds on this ground, the third ground regarding release of the petitioner on parole and consequent disappearance of subjective satisfaction for detention of the petitioner, becoming illegal, need not be considered. For the reasons stated above, the writ petition succeeds and is allowed. The detention order dated 1-8-1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

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